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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,050	10/01/2003	Yang-Sheng Xu	CUH - 008 . 01	6645

7590 05/17/2004

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EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/678,050	Applicant(s) XU ET AL.	
	Examiner Bena Miller	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Perkins.

Perkins teaches in figures 1-5 a mobile toy comprising only a single ground-contacting roller (12), a weight (19), and a member fixedly coupled to a weight (fig.4).

Regarding claim 2, Perkins further teaches a spherical contacting roller (fig.1).

Regarding claim 17, Perkins teaches in figures 1-5 a method for producing a mobile apparatus providing (fig. 1), movably coupling a weight (fig.3), and coupling a member to the weight (fig.3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Applicant's own Admission of Prior Art as set forth on pages 2, 3 and 7.

Perkins teaches in the figures most of the elements of the claimed invention. However, Perkins fails to teach a motor drive mobile toy, at least a motor and a drive system. Applicant admits that it is well known to have motor drive, at least a motor and a drive system to move a locomotive vehicle in the way as described in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a motor drive, at least one motor and a drive system taught by the Applicant's own Admission of Prior Art to the device of Perkins for purpose of moving the vehicle.

Claims 3-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Bryer, Adler or Martin.

Perkins teaches in the figures most of the elements of the claimed invention. However, Perkins fails to teach a motor drive mobile toy, at least a motor and a drive system. Bryer, Adler and Martin teaches a motor drive, at least a motor and a drive system to move a locomotive vehicle in the way as described in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a motor drive, at least one motor and a drive system taught by the Bryer, Adler or Martin to the device of Perkins for purpose of moving the vehicle.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perkins teaches a toy. Holbrook teaches rotary character toy. Cecil teaches mechanical toy. Bryer teaches a randomly self-propelled spherical toy. Adler teaches an animal amusement apparatus. Martin teaches a radio controlled

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vehicle within a sphere. May et al teaches a rolling egg toy. Kobayashi teaches a radio-controllable spherical toy vehicle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643.

The examiner can normally be reached on Monday-Friday.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Examiner  
Art Unit 3712

Bbm  
May 13, 2004